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DISTRICT COURT OF GUAM
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DISTRICT COURT OF GUAM
HAGATNA, GUAM

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF GUAM

UNITED STATES OF AMERICA,)	CRIMINAL CASE NO. <u>00-00128</u>
)	
Plaintiff,)	(LODGED UNDER SEAL)
)	
vs.)	GOVERNMENT'S SENTENCING
)	MEMORANDUM
)	
JOHN S. MARTINEZ,)	
)	
Defendant.)	
)	

The United States is seeking a substantial assistance downward departure to Level 8, to recognize the substantial assistance provided by the defendant in the investigation and prosecution of other persons who have committed offenses.

The Government asks that the Court consider the importance and the timeliness of the information the defendant provided to investigators and the importance of his testimony at the jury trials of Gil A. Shinohara and Austin J. "Sonny" Shelton. The extent of his cooperation is detailed as follows:

Defendant, pursuant to his Plea Agreement, agreed to cooperate with the government by assisting in the investigation and prosecution of individuals who were committing and had committed offenses against the United States. Defendant did cooperate in the investigation of

1 others by providing information to attorneys and agents of the government, including the Federal
2 Bureau of Investigation, the Criminal Investigation Division of the Internal Revenue Service , the
3 Federal Emergency Management Agency ("FEMA"), the Antitrust Division of the United States
4 Department of Justice and the United States Attorney's Office for the District of Guam.

5 In multiple interviews the defendant provided extremely critical information regarding the
6 illegal activities of Austin J. "Sonny" Shelton, the Director of the Government of Guam's
7 Department of Parks and Recreation ("DPR"), in conspiring to rig price quotations in violation of
8 the Sherman Act, 15 U.S.C. §§ 1, et seq., for contracts to repair damages done by Typhoon Paka
9 to the Paseo Stadium, a Government of Guam facility The defendant also provided equally
10 important information concerning the illegal activities of Gil A. Shinohara, the Chief of Staff for
11 the Governor Guam, to fraudulently obtain reimbursement from FEMA for a contract to fabricate
12 and erect concrete bus shelters as replacements for those damaged by Typhoon Paka..

13 Additionally, the defendant provided investigators with significant information that Thomas V.
14 C. Tanaka, a former Guam Senator and Speaker of the Guam Legislature, had illegally withheld
15 information material to the government's investigation concerning the bus shelters project. That
16 information concerned how the bus shelters contract had been awarded to Guam Concrete
17 Builders ("GCB"), a corporation owned and operated by Tanaka, by the Government of Guam's
18 Department of Public Works.

19 Furthermore, the defendant cooperated by testifying truthfully at the jury trial of his co-
20 conspirator in *United States v. Austin J. "Sonny" Shelton*, Criminal Case Number 01-00007. As
21 a lifelong friend of Shelton, the defendant's testimony was most convincing. He testified that
22 sometime in late 1998 or early 1999 he approached Shelton and asked him if he could give the
23 defendant some DPR construction projects. The defendant was suffering financially and was in
24 dire need of work. He felt he could approach Shelton because they had been good friends since
25 childhood. Shelton told the defendant that he, Shelton, would see what he could do. A week or
26 two later Shelton asked the defendant to find some contractors who could do tile and electrical
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1 work at Shelton's home. The defendant secured the services of two contractors to do the work.
2 He did not charge Shelton for securing the services of those contractors. Shortly thereafter,
3 Shelton called the defendant and told him he could have the Paseo Stadium scoreboard, billboard
4 and flagpole typhoon repair projects.

5 Martinez further testified that sometime around late March or early April 1999 Shelton
6 met Martinez at Paseo Stadium and gave him the specifications for the three projects. Shelton
7 told Martinez to make sure that three quotes were submitted on each project. Martinez asked
8 Shelton what the DPR estimates were for each project. Shelton told Martinez that each project
9 should be quoted at around \$20,000. The defendant's testimony was essential to proving that
10 Shelton initiated and organized a scheme to benefit from the typhoon repair projects offered by
11 the DPR. Shelton was convicted by a jury in the District Court of Guam following a trial in
12 September 2001 of wire fraud, bribery, conspiracy to restrain trade and conspiracy to commit
13 money laundering and subsequently sentenced to 100 months imprisonment.

14 Defendant's testimony also resulted in the guilty plea of Primitivo Duque who owned and
15 operated JBL, a company that was implicated in the bid rigging of other DPR Paka repair
16 contracts. Carlos admitted and subsequently pled guilty to participating in bid rigging DPR Paka
17 repair contracts and agreed to cooperate and testify regarding Shelton.

18 The defendant also testified in the January 2005 jury trial of Shinohara. Although
19 Shinohara was acquitted of Count 12, the charge to which the defendant's testimony related, his
20 testimony was consistent with his prior statements. The defendant admitted to making and
21 backdating a quote letter at the request of Shinohara regarding the bus shelters project..

22 The defendant's cooperation was timely and considered by the Government to be
23 significant. The Government believes the defendant has been truthful and his information has
24 been reliable. Guilty verdicts against Shelton were returned on all counts on which defendant
25 testified.

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1 Shelton, Shinohara and Tanaka were prominent and influential persons on Guam. In
2 addition to holding the position as Director for DPR, Shelton had served as a Senator in the
3 Guam Legislature, and was appointed the Public Auditor and the Deputy Director of the
4 Department of Administration by the Governor of Guam. It cannot be lost upon a businessman,
5 such as the defendant, that his cooperation and testimony would likely result in financial and
6 social hardships for him and his family, and potentially, in danger of injury to himself. His
7 sentence should account for his willingness to accept responsibility for his own conduct and to
8 cooperate against powerful and politically well connected people.

9 For the foregoing reasons, the government respectfully requests that the Court grant the
10 Government's Motion for a Downward Departure from the range otherwise applicable under the
11 Sentencing Guidelines to a Level 8. Furthermore, the Government respectfully requests this
12 Honorable Court impose a sentence of probation for five years on the defendant. The United
13 States further requests that the Court order the defendant to pay the fine within the range
14 described in the Draft Presentence Report.


15 John Martinez was the pivotal witness in the trial of Austin J. "Sonny" Shelton. The
16 prosecutors of that case unanimously agree that without the defendant's truthful testimony they
17 could not have obtained convictions in the Shelton trial. A sentence of five years probation and a
18 fine of at least \$4,000 and not more than \$40,000 balances the defendant's culpability and his
19 substantial, even crucial, assistance.

20 RESPECTFULLY SUBMITTED this 30th day of September, 2005.

21 NOEL L. HILLMAN
22 Chief, Public Integrity Section
23 Department of Justice

24 RUSSELL C. STODDARD
25 First Assistant U.S. Attorney
26 Districts of Guam and NMI

27 By:

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